



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 12, 2022

IN THE MATTER OF:

Appeal Board No. 624476 A

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A.L.J. Case No.

decision of the Board filed January 29, 1998 (Appeal Board No. 479656), which affirmed the decision of the Administrative Law Judge filed December 5, 1997 (097-34376). The decision of the Administrative Law Judge sustained the initial determination disqualifying the claimant from receiving benefits, effective October 1, 1997, on the basis that the claimant voluntarily separated from employment without good cause.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decision.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer, a division of a company that distributes music, from July 1991 until September 30, 1997, last as a supervisor for special markets. She is a minority woman who holds a Master's Degree. She normally worked 9 A.M. to 6 P.M. She worked overtime and often worked through lunch.

The claimant trained people less qualified than herself to become her manager. Her outgoing manager, a man who had been promoted over the claimant, told her that he was going to recommend the claimant as his replacement, as she was qualified and had seniority. The manager left in January 1997. The vice president, the claimant's indirect supervisor, told her that the outgoing manager never suggested her for the position. Instead, the vice president promoted another individual, VB, to be the new manager. VB lacked seniority,

did not meet the educational requirements, and lacked experience. VB became the claimant's supervisor in March 1997. Few women were promoted and often younger individuals who are white were promoted.

In April 1997, the claimant asked the vice president why he felt that she was not qualified for the manager position. He told her that he thought it would send the wrong message, but he did not elaborate.

In May 1997, the claimant had a meeting with the vice president and the vice president of human resources. The vice president told her that she had communication problems, was too sensitive and also too authoritative and that she was unpleasant to deal with. The claimant also asked why VB was being placed in her department. The vice president stated that the claimant was argumentative but that he felt he would be more comfortable with VB because she was easier to handle than the claimant.

On August 15, 1997, the claimant obtained permission from her supervisor to work through lunch so she could attend a free session at a health club at 5 P.M. As she was leaving for the health club, the vice president asked where she was going. The claimant explained that she was going to the gym for an hour, after which she would return, and that she had obtained permission from her supervisor. The vice president told her that it was a very bad management decision and that he needed her at her desk at all times to respond to questions. The claimant went to exercise class. When she returned to the office after her session at the gym she met with the vice president and tendered her resignation. The claimant offered several reasons for quitting, including being passed over for promotion.

OPINION: The credible evidence establishes that the claimant quit, in part, because she was passed over for promotion and was subject to discrimination. Significantly, the claimant was passed over for a promotion to manager that was given to a woman who did not have seniority, did not meet the educational requirements, and lacked experience. In addition, typically younger, white individuals, often males, were promoted. We note that the employer has not appeared to present any evidence to refute the testimony of the claimant in this regard. When the claimant asked the vice president why she was not qualified for the manager position, he told the claimant that it would send the wrong message to others in the company and he also stated that he would be more comfortable with the person that was given the promotion because that individual was easier to handle, as the claimant was argumentative and lacked

communication skills. We, therefore, conclude that, as the claimant quit due to discriminatory practices with respect to promotions, the claimant had good cause to leave her employment. Her employment ended under nondisqualifying conditions.

DECISION: The decision of the Appeal Board filed July 26, 2019 (Appeal Board No. 607036), is rescinded.

The decision of the Appeal Board filed January 29, 1998 (Appeal Board No. 479656), is rescinded.

The decision of the Administrative Law Judge filed December 5, 1997 (A.L.J. Case No. 097-34376), is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 1, 1997, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

VP

GERALDINE A. REILLY, MEMBER